SOCIAL INFRASTRUCTURE LAW IN THE UK, EU AND US

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Abstract

What should be the goals of social infrastructure, and the best means to achieve them? Social infrastructure is a new term to describe the welfare state, whose conceptual foundations were laid in Lord Beveridge's Report, *Social Insurance and Allied Services* (1942). A good government, said Beveridge, should tackle five evil 'giants', namely disease, ignorance, squalor, idleness, and want. These could be overcome with a universal free health service, public education, public housing, full employment, and income insurance (especially old age pensions, unemployment, and disability protection). Today, nearly every country has policies related to these goals, but with widely varying degrees of success. This chapter focuses on the unequal fulfilment of the rights to universal free higher education, health care, and the central bank's operations in monetary policy as it affects the rights to social security, full employment with fair pay, and housing. It focuses on the UK, EU and US for comparisons. It contends that public education and health, free at the point of use, with democratic governance, produce the best outcomes: found more in Europe, not the US. It contends that central bank goals that place full employment and inflation on equal levels are superior: found more in the US than in Europe. Much is still to be desired in all systems to fulfil universal human rights.

Keywords: Welfare, social, infrastructure, education, health, central bank, housing, inflation, unemployment, university, human rights.

JEL Codes: K20, K23, K31, K38, I18, I28, I31

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1. Introduction

Society's promise of a good life for all is one we can honour whenever we choose. We have enough resources to ensure we all grow up healthy and educated, with warm homes, fulfilling jobs, and fair pay into our twilight years. Disease, ignorance, squalor, idleness, and want - the five 'evil giants' that the welfare state's architect, William Beveridge,[1] aimed to slay - persist because our society lacks confidence in solving the problems, we fear the price tag, and we still harbour distrust of others. Yet the path to pursue the five 'good giants' - of health, knowledge, splendour, industry and plenty - and live in a more perfect society, is paved before us in nearly every country, if we only choose to move.

In living memory we have made huge strides. The 'Human Development Index' compiled by the United Nations shows that people around the world live 10 years longer, spend 3 years more in education, and have become much richer (measured by Gross Domestic Product) since its first edition in 1990.[2] Nearly everyone is climbing, and not simply because technology is better, but because human societies are becoming better at distributing the benefits of technology.[3] Yet we can also see vast differences between countries, and within countries. There is more inequality, even regression, in those countries wedded to evidence-free economic theories, wielded by political parties that serve corporate money.

A modern term to embrace the welfare state is 'social infrastructure'. Health, education, housing, investment for fair paying jobs, and social security, are critical infrastructure as much as electricity, telecoms, water, roads, rail or ports, because without them an economy does not run.[4] They are 'social' in the sense that they involve solidarity,[5] sharing benefits and burdens, to each by their need, from each by their means. People know they may not rely on a university, hospital, public housing, or unemployment benefits, as much as another person. Yet they accept they pay taxes that benefit others, because 'there but for the grace of God go I'. And if nothing else, like making a social contract, even from a selfish viewpoint, people understand that everyone benefits from having a healthy, educated, and fulfilled population, because we all rely on other people's trade and work, goods and services. In fact there is no reason why, in place of a market price system, the same social solidarity principles cannot be applied to transport, communications, energy, basic banking, or food and water - indeed they increasingly are.[6]

Part 2 explores two rival purposes of social infrastructure, and gives a brief historical background. It suggests that seeing the welfare state as social infrastructure is useful, both because welfare is a core element of economic organisation, and other infrastructure could well be organised in the same way: free at the point of use, universal, and funded through principles of fair tax, not arbitrary prices warped by unequal power. Part 3 traces three conceptions of the economic functions of social infrastructure. One is that most social infrastructure is a government failure, and probably should not exist. A second is that social infrastructure addresses market failures, and this limits its scope. A third, and more conclusive, is that social infrastructure's function is the same as universal human rights, to ensure that everyone has the material resources to develop their personalities to the fullest.[7] Part 4 summarises the finance and governance of social infrastructure in the UK, EU and US, focusing on three specific fields: university, health care, and central banking as it affects jobs, incomes, and housing.[8] It contends that the systems which are closest to fulfilling universal human rights tend to adopt similar principles of public finance and democratic governance. Part 5 concludes.

2. Two political purposes, and a brief history

Before examining the different models of social infrastructure, it is worth stepping back to understand the law's political purposes, history, and economic functions. The history is best understood, not as a coherent development, but as riven by two contradictory, political goals. Social infrastructure was created either as a ruling class compromise to maintain control, or as a real means to create a good life.

As a means of 'control', primarily in the 19th century, public education, health and social security developed not solely, but largely as a grudging compromise in still-authoritarian states. In 1860s Britain, Robert Lowe MP (who later become Chancellor of the Exchequer) had just lost his frenzied campaign against the Reform Act 1867, which doubled the voting franchise to just a third of adult men, the vote still tied to property. Beaten but still with support, Lowe declared that if more working people had the vote, then 'we must educate our masters',[9] and his Liberal Party set about creating the elementary school system.[10] The beginning of universal education in England, then, was not so much about the good of the children of the working class, whose trade unions Lowe said were founded upon 'the most grinding tyranny',[11] but about preserving the social hierarchy through a rigid Victorian curriculum, geared to make loyal, obedient subjects.

Similarly, in 1880s Germany, the Bismarck government created the first system of health insurance, unemployment benefits, and pensions to undercut the movement for social democracy,[12] whose party and trade unions were firmly prohibited.[13] 'Whoever has a pension for his old age', said Bismarck in 1881, 'will put up with much more.'[14] The United States, of course, could do few of these things. In the 1883 *Civil Rights Cases*,[15] through to *Lochner v New York*,[16] and up to Franklin Roosevelt's re-election in 1936,[17] the US Supreme Court strangled nearly every social right in its cradle. Courts struck down everything from state pensions and social security,[18] to labour rights for children,[19] to fair wage laws,[20] with their self-serving theory that regulation of private corporations violated the 'due process' clauses, inverting the Constitution to enrich its class.

As a means to create a 'good life', largely from the 20th century, the new concept of social infrastructure developed when socialist, democratic, and labour politicians won power. They were for the first time able to write laws in the interests of all. Education was to become universal but not as a tool of control, rather to empower people to live a good life. After World War Two in the UK, access to university was expanded, and the Robbins Report even said its goal was 'to produce not mere specialists but rather cultivated men and women' and 'common standards of citizenship'.[21] The National Health Service was created, not merely to keep workers alive, but because it was 'repugnant to a civilised community for hospitals to have to rely upon private charity' and 'money ought not to' stop access to 'an efficient health service'.[22] The Bank of England was brought into public ownership (by that point more a formality) and its policy was to fulfil the 'public interest',[23] including by assisting the government in creating full employment.[24]

Similarly, in Germany, the democratic Weimar Republic was founded upon a constitutional principle that workers should participate at all levels of economic management.[25] These rules were systematically dismantled by the courts during the 1920s,[26] and then by Hitler.[27] But after the war, in 1949, the *Grundgesetz* revived the 'social state' as a core constitutional principle, a concept encompassing education, health, labour rights, and welfare at once.[28] The US remained hobbled by the slow start imposed by its Supreme Court in advancing health care or social security, but in its post-war reforms it went the furthest to enshrine 'maximum employment' in its law as a central goal of the Federal Reserve.[29] Roosevelt's death meant that his full programme never came to fruition, for a legislatively fashioned 'Second Bill of Rights' to 'spell security'.[30] Yet Roosevelt's policies, and Johnson's Medicare and Medicaid, were firmly rooted in the political purpose of creating a good life for all.

3. Three economic functions of social infrastructure

If the political reasons for social infrastructure were divided, so were the conceptions of its economic functions. First, in the conception of Milton Friedman, nearly all social infrastructure is a government failure, with the unintended consequence of harming the people it is meant to help. It is doubtful for university, wrote Friedman, that there is any 'appropriateness even of subsidizing schooling at this level'. There was certainly no 'case for nationalization'.[31] For soaring health costs and plummeting outcomes a 'cure requires reversing course, reprivatizing medical care', wrote Friedman in 2002, especially by 'eliminating' tax-free employer insurance.[32] Unemployment, argued Friedman, is 'natural' and 'can be kept below the "natural" rate only by accelerating inflation',[33] a theory that rejected the 'right to work', social security, and action for stable house prices in one swoop.

There was never any credible empirical evidence for Friedman's theories.[34] Even leaving theory aside, the worse problem is that where Friedman's theories took hold the most, as in the US, the outcomes among the worst in the OECD across literacy, tertiary education costs, obesity, life expectancy, stagnant wages, homelessness, addiction, and poverty off the chart, particularly when set against a nominally high Gross Domestic Product. If ever a set of theories had failed, these were those.

A second conception, adopted by a majority of economists, was that social infrastructure resolves a range of market failures. To give three core examples, health care could not be left to the market, since doctors have a 'natural monopoly' on their skills in medicine, which not everyone can have, and require extensive training.[35] This means supply will not simply expand in response to demand. Even if it did, doctors could 'hold out' longer to demand prices that take ever more income from patients.[36] If organised in corporations, the separation of ownership and control would augment even further the power of those in charge of hospitals or insurance firms to bargain for unjustly high prices.[37] It was no coincidence that when Nye Bevan, Minister for Health, created the National Health Service, he said he 'stuffed [the doctors'] mouths with gold' to overcome opposition in the powerful medical profession's lobby.[38] In education, professors and teachers, particularly before standards rose through universal education, are in a similar position of power, enabling universities to charge fees at ever climbing rates when left to a market, because students and parents will often pay as much as possible to improve their life chances. Moreover, both patients and students are in a systematically weaker position, both as regards bargaining power, and information, and their capacity to make rational choices.[39] The asymmetries might lie in which operation for the patient, or degree for the student, will prove a good choice. It also extends to the knowledge of the risks, likelihood of success, or true production cost.[40] In housing, tenants dealing with a landlord, or first-time homebuyers dealing with a developer, are in similar situations of extreme unequal power, in terms of who can 'hold out' longer, information asymmetry and unequal capacity for rational calculation. Thus, the general rules of markets systematically fail in health, education, and housing.

Market failures, on the standard account, are even more vast when it comes to jobs, real pay, and social security: all of these things may be destroyed by macro-economic 'disequilibrium' or an outright crash. John Maynard Keynes argued that total capital investment would not return to equilibrium after the Wall Street crash, so that without positive government a depression may continue indefinitely. The 'aggregate demand' in an economy is determined by the level of investment.[41] This sets the 'velocity of money' flowing through the economy, which may stay high or low.[42] Wealthier people have a lower 'propensity to consume' their income.[43] They rather save, and may hoard (not invest) their wealth in times where confidence is destroyed.[44] Government, therefore, had a twin duty to invest money to counteract irrational business cycles and crashes, and to pursue a stable monetary policy. Thus the number of jobs, wages, or house prices (and human rights) are shaped by government policy in economic management. Government cannot simply say 'let it go', because really *laissez faire* does not exist. Government is always making a decision. Omitting to act, like an act itself, is just as much a positive choice.

If we had to choose, the conception of social infrastructure as remedying market failures is clearly preferable, and based in reality, compared to Friedman's warped worldview. Yet as we look closely at market failure theory, we understand that markets are built by law, and it is not *markets* that are failing, but the *legal institutions*. Laws build different markets of infinite variety with rules of contracts, property, corporations, torts and a multitude of others. So, there is not one thing called 'the market' which fails. It makes much more sense to ask, under which conditions do generally accepted principles of contracts, property and corporations improve welfare? These principles include transparency, fostering trust, and workable competition, where access to productive property is broadly equal.[45] Where those conditions exist, the state should enable private ownership. Where those conditions do not exist, it should follow generally accepted principles of good governance to run a sector itself. Good governance must be for a purpose, and not merely imagine what an efficient market might do (at the frontier of productive possibility, with allocative efficiency, or some undefined type of utility), because markets have no end in themselves. They are a means an end, and the ends can be defined in any way a democracy chooses.

So, the third conception of social infrastructure is that its economic function is to fulfil higher, public goals that we see in human rights law, not simply to rectify market failures. Social infrastructure is there to ensure every person can live a fulfilling life, develop their personality, with the material resources to fully participate in society.[46] In each sector, this meta-goal becomes more specific, such as attaining better health outcomes, lower waiting lists, universal education, better quality housing, and higher real incomes. These goals may vary in a democratic society according to social values, and may be revised as more is understood about the means we have to make them real. Yet in this way, the economic functions of social infrastructure are the same as universal human rights.

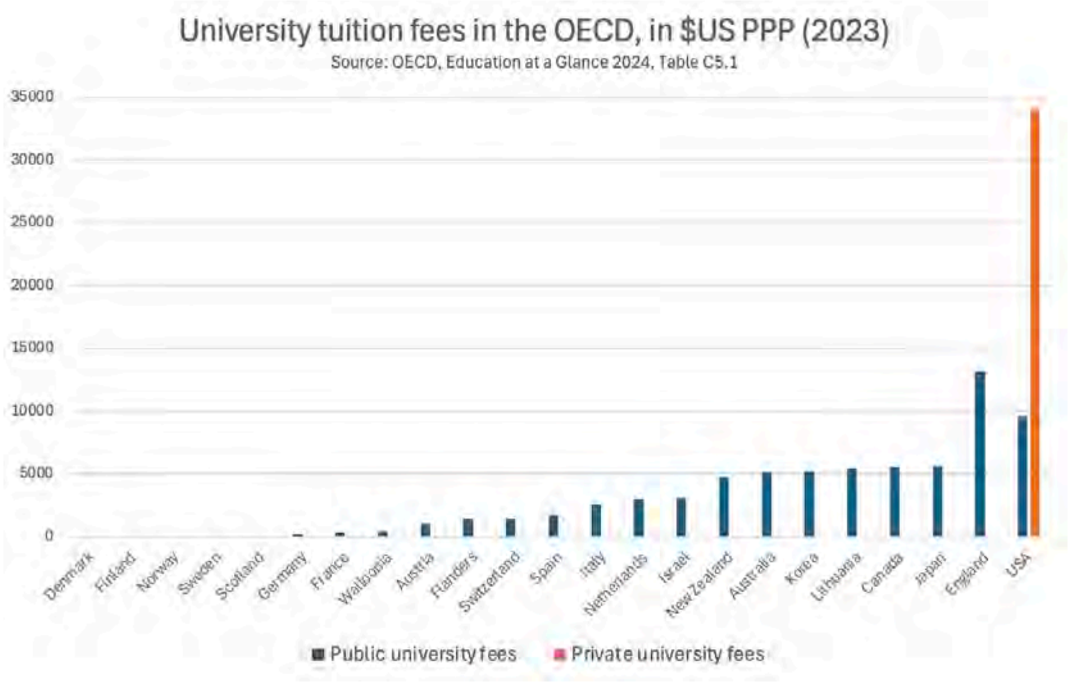
4. Social infrastructure finance and governance in the UK, EU and US

Despite our international commitments to fulfil universal human rights to education, health, housing, full employment and social security, outcomes vary widely between countries. National jurisdictions often fail to enforce rights, for instance by courts interpreting national law in light of treaties.[47] The gap between commitment and enforcement is vivid in the Sustainable Development Goals, aiming for much less than full human rights fulfilment by 2030, and most relating to the lack of social infrastructure. Rather than courts, in most countries the outcomes depend on budgets that governments allocate, and the details of legislation to build up institutions. This section focuses on three key areas, that remain in hot contest: the right to tertiary education, to health care, and the central bank's effect upon the rights to full employment, housing and fair incomes.

Higher education

In international law, there is a right that tuition-free university is made available, because higher education must be 'equally accessible to all on the basis of merit' and 'in particular by the progressive introduction of free education'.[48] Adopted in 1966, this Covenant reflects what is clear from numerous studies. If money is a requirement to enter university, this corrupts the goal of university access being based on merit, because worry of money makes it harder to study, and because fear of debt systematically deters poorer students.[49] A token number of scholarships or 'widening participation' measures do not change the direct wealth discrimination of tuition fees. Fees also indirectly discriminate on the basis of race if wealth inequality and race overlap. For these reasons, as in Figure 1, the majority of countries in the OECD do not require any significant tuition fees for home students, though only a minority guarantee fee-free tuition for international students. Figure 1 includes private US university costs, as they dominate the top ranked universities, unlike other countries. Every country behind New Zealand has fees of around $3000 or less (£2215 or €2500), which is still incompatible with the International Covenant, yet capable of being paid by students without parents, and around a month's work, approximately the same as £1000 fees when introduced in the UK in 1998. An international treaty has not yet been written to structure fiscal balancing between countries that encourage free movement of students without fees, as exists for health.[50]

Figure 1: OECD university tuition fees



Some countries also give grants for study. Under the European Social Charter 1996 article 10(5)(b) member states should fund university students with grants,[51] because it was recognised that full time study should be treated like a full time job. There are many notable exceptions,[52] yet this programmatic duty is often unfulfilled. The EU's Erasmus scheme does give funding for exchange students,[53] but legislation to fully implement the Charter has not yet been passed. The UK, which also signed the Charter, has proceeded in the opposite direction, imposing £1000 in tuition fees from 1998, rising to £3000 in 2005, £9000 in 2011, £9250 in 2018, and set to creep up with inflation since 2025.[54] The US is even more extreme. Although the GI Bill extended tuition free study to veterans from 1946, and there was a system of federal subsidies to reduce university fees, this was dismantled during the 1980s under the Reagan administration. This inequality means that parental income directly determines likelihood to attend college in the US.[55] This injustice is compounded by the system of 'legacy admissions', that enable rich parents to buy undeserving kids up to 25% of places at university,[56] ahead of those who work.

University governance varies hugely, but the evidence suggests that universities that perform better tend to guarantee greater voice to staff, alumni and students, and the public, on governing bodies. Worse models let governing bodies choose their own successors, in the name of governor 'independence', even though such governors are entirely dependent on incumbents, divorced from any public, staff or alumni interests. Better models ensure governing bodies are majority-elected. For instance, at Oxford 15 out of 25 people on the Council are staff-elected, and at Cambridge 16 out of 25 are staff-elected plus 3 students, each since the 1850s.[57] In Toronto, around a third of the

Council is elected by staff, while alumni and students elect another third, and the provincial governor selects the remainder.[58] Harvard University has a Board of Overseers, wholly elected by alumni, which has power to withhold consent from the fellows' nominee for President.[59] ETH Zürich and NUS have boards appointed by the legislature or minister. The bottom line is that top universities have fewer members chosen by self-perpetuating boards. Even where this is common in the US, good universities such as Caltech and Stanford have powerful academic faculty senates with specific rights, to secure they determine matters of academic policy. Figure 2 gives a summary of the top 10 universities as ranked by the QS University Ranking survey.[60] (We may note, these ranks would not be dissimilar before US and UK tuition fees rose stratospherically.)

Figure 2: QS top 10 ranked universities, and governance models

2025 rank	University	Governance	Staff	Alumni	Public	Total	Stakeholder %
1	MIT	75 MIT Corporation members: 25 life members chosen by Corp., 25 term members chosen by Corp., 15 chosen by alumni association, 5 from students and recent alumni, 8 ex officio, under Bylaws, section 2.	0	20	0	75	26.67%
2	Imperial	4 out of 27 staff-elected, 2 elected by students.	4	2	0	27	22.22%
3	Stanford	38 member Board of Trustees, 8 by alumni, rest chosen by existing trustees.	0	8	0	38	21%
4	Oxford	15 out of 25 Council elected by staff. In addition, 3 non-voting students may attend.	15	0	0	25	60%
5	Harvard	Alumni elect 30 member Board of Overseers, which consents to President.	0	30	0	30	100%
6	Cambridge	16 out of 25 Council elected by staff, 3 by students who have a vote.	16	3	0	25	76%
7	ETH Zürich	11 person board, elected by the Swiss Federal Council under ETH Act art 24.	0	0	11	11	100%
8	NUS	Minister of Education appoints 19 person Board of Trustees under NUS (Corp) Act 2005 s 6.	0	0	19	19	100%
9	UCL	6 out of 20 person Council elected by staff on Academic board, 2 by students.	6	2	0	20	40%
10	Caltech	Currently 78 board members, chosen by the existing Board of Trustees under Bylaws.	0	0	0	78	0%

Some countries have laws that regulate all institutions. France requires that around a third of the governing body is elected by staff, and students also have representation.[61] Scotland requires that governing bodies have a minimum of two Council members elected by staff, and two chosen by unions, though it sets no limit on total size of Councils.[62] But clearly these laws could go further.

Comparing the performance and outcomes of universities across jurisdictions is difficult, because unlike the OECD PISA tests for schools,[63] global university league tables are non-standardised, subjective, favour English speaking countries, cater for wealthy international students, and do not really assess the quality of research or teaching. Even so, the US is under-represented, with more elite US universities clustered near the top, but the depth of educational attainment is highly unequal, and on average poor. Another proxy for innovative research could be patent filings per capita, although this would merely measure one dimension of the natural sciences, and says little about humanities or social sciences. We can see, however, that high university fees bear no relationship to the quality of universities in general.

Health care

There is a universal human right to ‘health and well-being’,[64] meaning the ‘creation of conditions which would assure to all medical service and medical attention in the event of sickness’,[65] although this does not prescribe the exact system. There is no right to health free at the point of use, as is found in ‘Beveridge’ systems such as the UK’s NHS, in Spain, or in Denmark. The law is agnostic, to enable ‘Bismarck’ systems of health insurance to operate, as in Germany, France, or Japan, often paid through a contract, work, or social security contributions, so long as those who cannot pay get care, universally. The only system not compatible with international law is a ‘Broken’ system, such as that in the US, Nigeria, or Pakistan, which refuses to guarantee everyone health care as a human right ‘to all’.

Between Beveridge and Bismarck systems, finance varies in ways that affect health outcomes. When measuring life expectancy, public insurance systems, like Japan, do equally well or better than the best publicly owned systems, like Spain. Systems with a large element of private ownership, like Germany, the Netherlands or Switzerland, do much more poorly with higher costs. Among Beveridge systems, the UK is notable in seeing costs soar, and outcomes worsen, since the Health and Social Care Act 2012 raised the cap on private work from 2% to 49%, and gave private providers a right to not be discriminated against in tendering applications. Figures 3 and 4 show the movements in the costs of OECD health care systems, plotted against changes in life expectancy from 2010 to 2019 (by which point the US is literally off the chart with higher costs and less life), chosen as the year before the disruption of Covid. It adopts the US Social Security Administration classification. Blue is publicly owned, green is public insurance, yellow is private/public insurance, orange is private insurance, and red is private but not universal.

Figure 3: OECD health costs and life expectancy in 2010

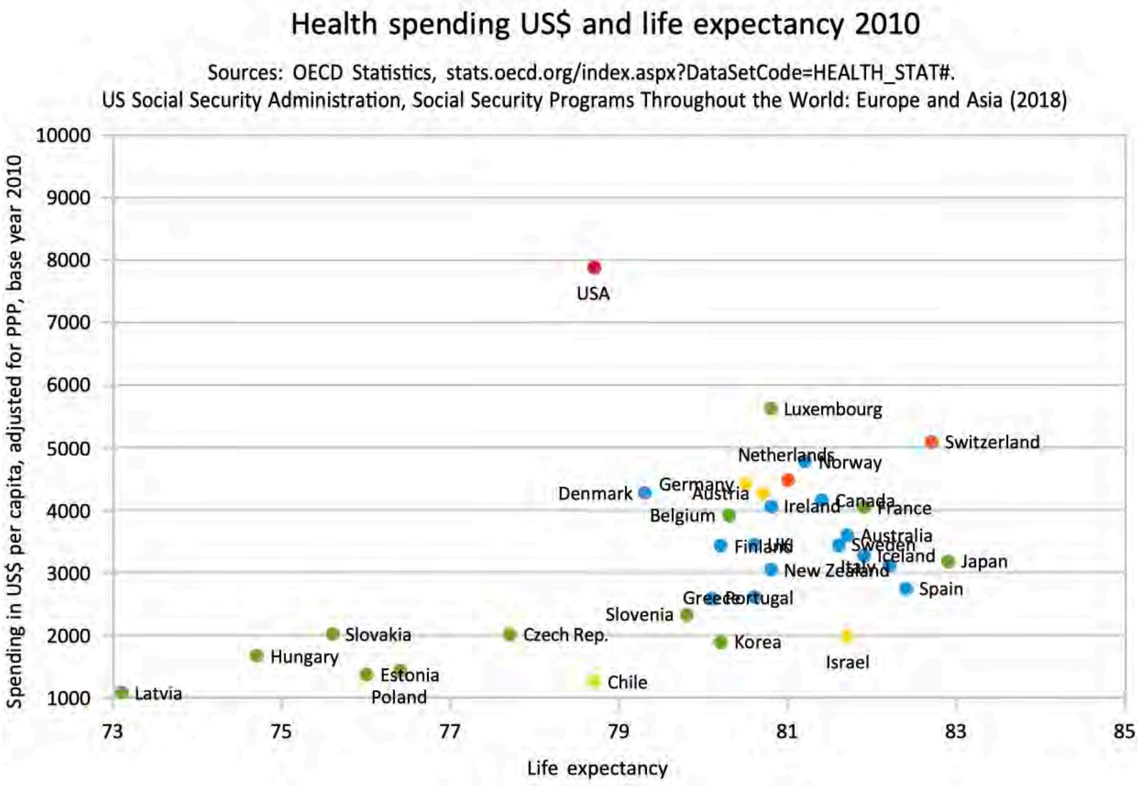
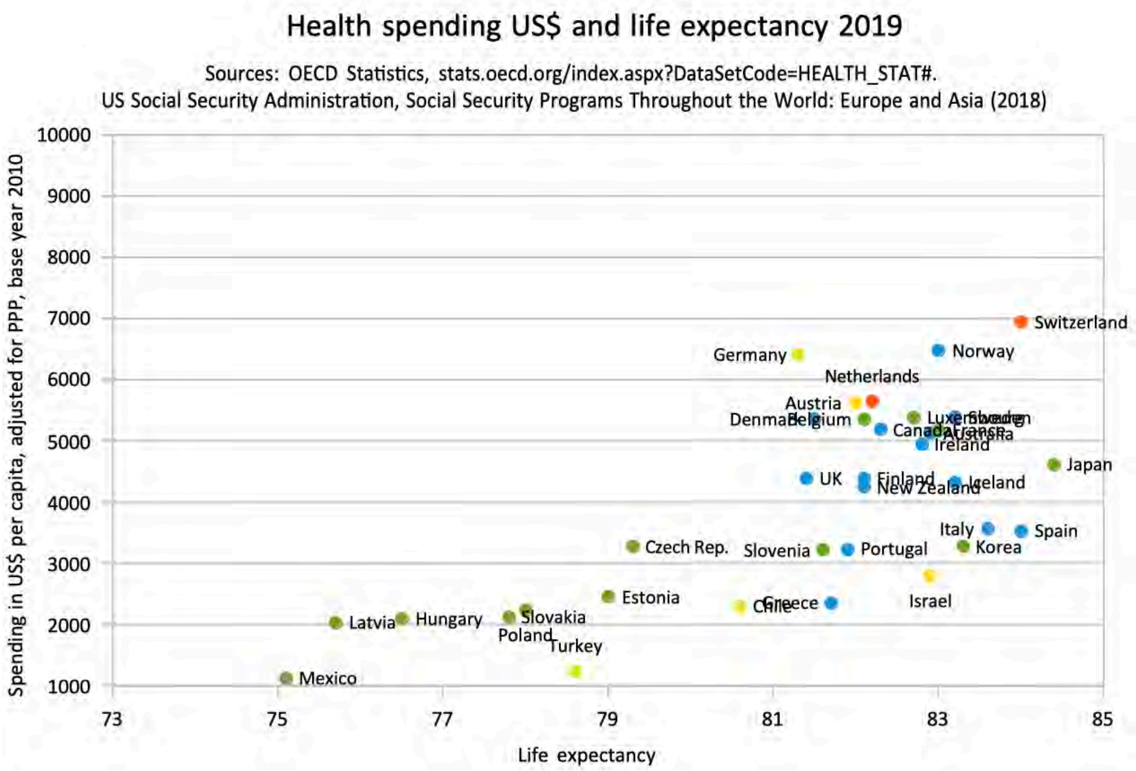


Figure 4: OECD health costs and life expectancy in 2019



A key change to highlight is that the UK had dropped well behind Finland, yet it was spending more, following its 2012 reform to increase private involvement in health.

Health care governance varies widely, yet better performing systems tend to include more staff and patient involvement. The NHS Act 2006 requires that foundation trusts, which run groups of hospitals, have around a third of their governing body elected by staff, give representation to local councils, and a representative from a university if there is one in the area.[66] This was partly inspired by the experience in Spain, which has a similar method of involving stakeholders. Most US health institutions are run in a top-down fashion. Like with most of the sector, there is no rational state or federal regulation. German hospitals operate under the same codetermination laws as all larger work places, so that workers elect at least one-third of the seats on the supervisory board of directors wherever the enterprise is more than 500 staff, or just under half the seats with over 2000 staff. State laws also often require representation of patients and local government.[67]

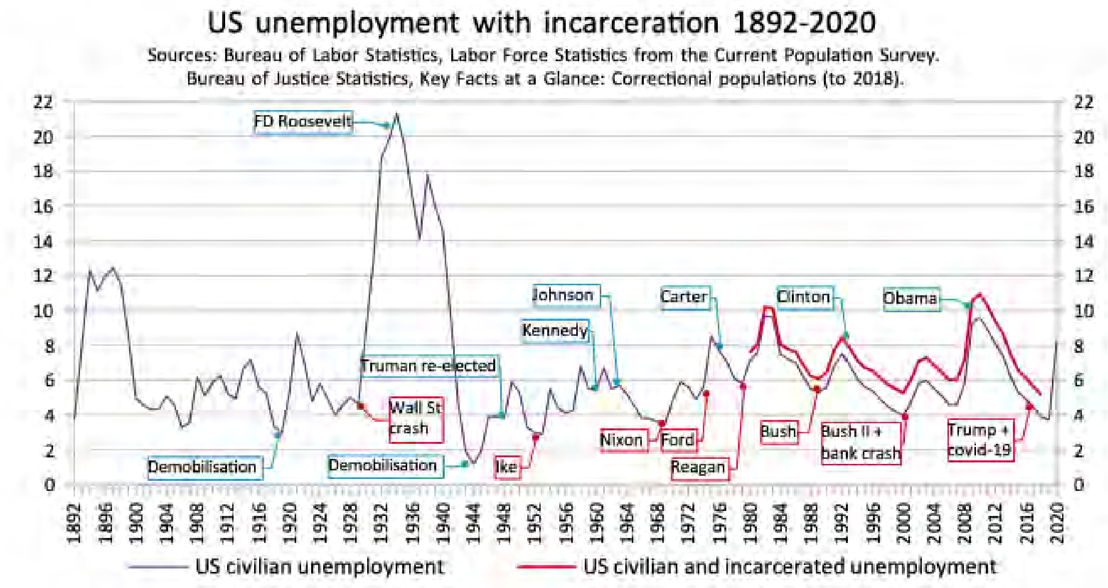
Central banking, jobs, incomes and homes

Banking may seem removed from social infrastructure and human rights, yet monetary policy influences the 'right to work' and full employment, the right to 'just and favourable remuneration', the right to housing, and the 'right to social security' through its impact on the cost of living.[68] If central banks lower interest rates, or buy securities to influence private banks to lower rates, this boosts business borrowing, which usually raises employment, and vice versa. If productivity does not rise, too much credit may also increase inflation, and what people can afford on their incomes.

Central banks in nearly all countries have become public institutions, with publicly determined mandates in law, yet these vary widely. The European Central Bank's mandate is the most restrictive, focused solely on price stability,[69] ostensibly to combat inflation. It has been convincingly argued that in law, this is subject to the overall goals in the Treaty on European Union that include 'aiming at full employment' and 'improvement… of the environment'.[70] However in practice, central bankers view their sole focus as inflation, and narrow even this. Many still believe Friedman's theory of the so called 'natural' rate of unemployment, which he argued to be higher with more labour rights and union power,[71] without any credible evidence. This sometimes breaks into the press, where bankers assert that if real wages rise, they should raise interest rates to suppress wages (and jobs) because otherwise prices may rise in general.[72] This is logically and empirical false. If wages rise, and productivity does too, everyone is better off, and there will be no inflation.[73] The Bank of England is also restricted, required to focus primarily on price stability and, subject to that, assist the goals of the government for employment and economic growth.[74] The most progressive is the US Federal Reserve Act of 1911, as amended in 1946, which requires pursuit of maximum employment, stable prices, and long-term growth of the money supply.[75]

Though more pro-labour on paper, the US system in practice pursues maximum employment only if there is a Democratic president, not a Republican. For over 100 years, Republican administrations always left office with increased unemployment, while Democratic administrations always reduced unemployment. Presidents also have fiscal power, and the Fed is notionally independent, yet Fed appointments are also made by the President, meaning that 'independence' is not as sacred as often said. Figure 5 shows the changes in unemployment and inflation in the US, mapped on to the type of political party, and given the enormous numbers of Americans in prison, it includes how this raises the true unemployment rate.

Figure 5: Unemployment and inflation in the US



The appointments process for each central bank is significant. In the European Central Bank, appointments are made by the European Council, a collection of heads of state and finance ministers, and removal can only be for serious misconduct.[76] In the Bank of England, appointments are made by the Prime Minister, usually working with the Chancellor, depending on the relations of political power, and removal can only be for a list of statutorily defined reasons.[77] There are no formal requirements for different interest groups to be on the governing body, although trade union leaders have been appointed in practice. Again the most progressive are the US Fed appointments, where governors must be chosen with 'fair representation of the financial, agricultural, industrial and commercial interests, and geographical divisions of the country'.[78] Again, this works only when Democrats are in office, as Republicans destroy employment in a way that benefits capital, while Democrats increase it to benefit labour. The only question is whether the law is infused with public goals that raise everyone's welfare.

These financial functions and governance structures matter because of the ongoing debate over a central bank's legitimate role: whether it should focus on inflation (myopically defined), or regard is had to full employment and fair wages, inequality, housing affordability, and the environment.

First, where taming inflation is the key goal, bankers have often equated this with a necessity to raise interest rates in order to halt real wage growth, particularly by restricting lending and therefore reducing jobs. This goes beyond the legitimate powers conferred by statute, because price stability is not the same as wage stability. On the contrary, growing real wages are central to human development (but may be bad for owners of capital). Price inflation damages human development (yet may be good for owners of capital). Related to this, price stability has not yet been interpreted to tame wage inequality, even though more wage inequality is likely to lead to higher, more volatile prices, and greater equality in wages and wealthy is likely to produce a more stable economy, more resilient to shocks.

Second, bankers' interpretation of 'price stability' has also not yet included stability of housing prices in any meaningful way. The 'Consumer Price Index' used by the Fed and ECB or the more recent 'Consumer Price Index + Housing' used by the Bank of England excludes the cost of mortgage payments, which rise or fall in tandem with a changing base rate. This has a twisted logic to it. Raising the base rate directly increases mortgage costs, and so automatically raises inflation (including housing costs) even though the effect on business inflation is often to dampen (other) price inflation. Therefore central banks just give up, and ignore their massively inflationary impact on housing. As a method to calculate real living standards it is deeply flawed, and undermines the right to affordable housing.

Third, bankers' interpretation of 'price stability' has not been used to remove the single biggest threat (which also threatens our right to a home), that is volatile fossil fuels as the basis of energy in the economy. The OPEC oil price shocks of the 1970s, and the massive energy price increases since Russia's invasion of Ukraine underlined that oil, gas and coal are largely controlled by dictators, and their supply shifts in an erratic fashion. This is not the case for renewable wind, solar, hydro and battery storage. Yet central banks' asset purchases are not yet divested from fossil fuels, and central banks have so far failed to use their regulatory powers to eliminate fossil fuels from private banks' holdings, as they should to fulfil their legal mandates.

Added together what is needed is a full renunciation of Friedman's evidence-free theories, and the enactment of structured priorities in law for central banks to pursue full employment, real wage growth, consumer and house price stability, without conflating each. There needs to be a clear distinction between inflation caused by external shocks such as international fossil fuel price volatility, and domestic causes such as speculative booms and bust, which are increasingly less likely with good regulation.

5. Conclusions

Social infrastructure is essential for the economy. In the democratic world it is improving. Life expectancy is up, years in education are up, and real wages are climbing, and more people have homes, where countries follow the evidence for public, free, democratic, universal services. The major exception is the US, which is in long term decline across nearly every indicator, of education, health, wages and quality of life, given the stranglehold that corporate money has on American politics. Yet the democratic world cannot be complacent, because human rights are still unfulfilled. There is a need for a national education service in every country, and an international treaty, to promote tuition-free university and fulfil the right to study grants, as well as free child care in nursery years. Health care needs to focus on preventing illness by regulating its major causes: primarily unhealthy food and drink, air pollution, and degrading work. Governments need to restore the commitment to full employment, at fair wages, promote affordable housing, and end toxic fossil fuels, including by resetting central bank priorities. Finally, they should complete the right to universal social security by guaranteeing everyone an income at a fair (not just a basic) rate if they are not in employment, replacing the vast, wasteful means-testing apparatus, with automated payment systems. Once we do, humanity will turn towards a new age of prosperity.

Notes

1 W Beveridge, *Social Insurance and Allied Services* (1942) Cmd 6404, [8] ‘Want is only one of five giants on the road of reconstruction and in some ways the easiest to attack. The others are Disease, Ignorance, Squalor and Idleness.’ Also W Beveridge, *Full Employment in a Free Society* (1944).

2 See https://ourworldindata.org/human-development-index, and note the ‘Inequality-adjusted HDI’, since 2010. From 1990-2023, global average HDI rose from 0.608 to 0.756.

3 Universal Declaration of Human Rights 1948 art 27(1) right ‘to share in scientific advancement and its benefits’.

4 As Adam Smith put it, they are key for ‘facilitating commerce’: *The Wealth of Nations* (1776) Book V, ch 1, Part III, §90

5 cf *Federación Española de Empresas de Tecnología Sanitaria (FENIN) v Commission* (2006) C-205/03, [6] defining solidarity similarly for the purpose of competition law.

6 cf KS Rahman, ‘The new utilities: private power, social infrastructure, and the revival of the public utility concept’ (2018) 39(5) Cardozo LR 1621, 1642, with a similar definition. ‘Social infrastructure connotes the category of goods and services that enable a wide array of downstream uses for individuals and communities. As such, it may include some forms of economic infrastructure (such as communications), but also other kinds not normally included in economic definitions of infrastructure, such as rule of law, or access to information.’

7 UDHR 1948 art 29(1). cf JS Mill, *Utilitarianism* (1863) ch 5, speaking of social justice and utility interchangeably.

8 This leaves out fiscal policy for full employment, competition law for stable prices, pensions and social security, and public housebuilding or fair rents. See E McGaughey, *Principles of Enterprise Law* (2022) chs 4-6, 10, and 14.

9 Robert Lowe MP, 3rd reading of Reform Bill, Hansard HC Debs (15 July 1867) vol 188, col 1549. AJ Marcham, ‘Educating Our Masters: Political Parties and Elementary Education 1867 to 1870’ (1973) 21(2) Brit J Educational Studies 180.

10 Elementary Education Act 1870, requiring a school in every district.

11 Hansard HC Debs (15 July 1867) col 1546

12 *Krankenversicherungsgesetz* or Health Insurance Act (15 June 1883) RGBl S. 73, §§34, 38 and 59-68. *Gesetz betreffend die Alters- und Invaliditätsversicherung* or Old Age and Invalidity Act (24 May 1889) RGBl I S 97.

13 *Sozialistengesetz* or Anti-Socialist Act (19 October 1878) RGBl 34, 351-358. Long title: 'Law Against the Efforts of Social Democracy to Endanger Society.' Expired in 1890.

14 AJP Taylor, *Bismarck: the man and the statesman* (1955) 202-203

15 *Civil Rights Cases* 109 US 3 (1883) holding that desegregating accommodation, transport and theatres was unconstitutional.

16 *Lochner v New York*, 198 US 45 (1905) playing out the consequences of *Allgeyer v Louisiana*, 165 US 578 (1897).

17 *West Coast Hotel Co v Parrish*, 300 US 379 (1937) holding minimum wage laws constitutional, after threat to pack court.

18 e.g. *State Board of Control v Buckstegge*, 158 Pac 837, 842 (1916). *Busser v Snyder*, 282 Pa 440 (1925) (Pennsylvania pension). *Railroad Retirement Board v Alton Railroad Co.*, 295 US 330 (1935)

19 e.g. *Adkins v Children's Hospital*, 261 US 525 (1923)

20 e.g. *Hammer v Dagenhart*, 247 US 251 (1918)

21 Robbins Report (1963) Cmnd 2154 §§26–8

22 National Health Service Act 1946 s 1. Aneurin Bevan, NHS Bill, Hansard HC Debs (30 April 1946) col. 43.

23 Bank of England Act 1946 s 4.

24 White Paper, *Employment Policy* (1944) Cmd 6527, [43]–[45], [57]–[63]

25 Weimar Constitution 1919 art 165

26 O Kahn-Freund, 'The Social Ideal of the Reich Labour Court - A Critical Examination of the Practice of the Reich Labour Court' (1931) translated in O Kahn-Freund, R Lewis and J Clark (eds), *Labour Law and Politics in the Weimar Republic* (1981) ch 3, 108-161

27 E McGaughey, 'The Codetermination Bargains: The History of German Corporate and Labour Law' (2016) 23(1) Columbia Journal of European Law 135, part 3(3)

28 Grundgesetz 1949 art 20(1)

29 Federal Reserve Act of 1913, 12 USC, §225a. From the Employment Act of 1946 and the Humphrey-Hawkins Full Employment Act of 1978. See KVW Stone, 'A Right to Work in the United States' in V Mantouvalou (ed.), *The Right to Work* (2015) ch 15.

30 FD Roosevelt, *Eleventh State of the Union Address* (1944)

31 M Friedman, *Capitalism and Freedom* (1962) ch VI, 98

32 M Friedman, 'How to cure health care' (2001) VIII, 19

33 M Friedman, 'The Role of Monetary Policy' (1968) 58(1) AER 1, 10. Also M Friedman and A Schwartz, *A Monetary History of the United States, 1867–1960* (1963)

34 E McGaughey, 'Will Robots Automate Your Job Away? Full Employment, Basic Income, and Economic Democracy' (2022) 51(3) ILJ 511, part 2 on the non-connection between action for full employment and inflation.

35 JS Mill, *Principles of Political Economy* (1899) Book II, ch XIV, §2, 479. Mill's 'practical monopoly' is 'natural monopoly' today.

36 A Smith, *The Wealth of Nations* (1776) Book I, ch 8, 'the masters can hold out much longer.'

37 AA Berle and GC Means, *The Modern Corporation and Private Property* (1932) 5 and 64, analogy of workers to investors.

38 B Abel-Smith, *The Hospitals in England and Wales: 1800–1948* (1964) 480

39 cf *Kušionová v SMART Capital a.s.* (2014) C-34/13, [48] the Court of Justice of the EU emphasising a homeowner's unequal power both in terms of bargaining and level of knowledge, in relation to a bank.

40 J Stiglitz and J Rosengard, *The Economics of the Public Sector* (2015) ch 13, 367-382, on further rationales, but missing the essential one of unequal bargaining power of doctors, and hospitals, from rare skills as a 'natural monopoly', in contrast to Adam Smith or John Stuart Mill.

41 JM Keynes, *The General Theory of Employment, Interest and Money* (1936) chs 3 and 9.

42 Keynes (1936) chs 15 and 21

43 Keynes (1936) ch 22

44 MS Eccles, *Beckoning Frontiers: Public and Personal Recollections* (1951) 75–7

45 E McGaughey, *Principles of Enterprise Law* (2022) ch 2(2)(h), 78

46 UDHR 1948 art 29(1) 'Everyone has duties to the community in which alone the free and full development of his personality is possible.'

47 Many statements support 'indirect effect' but enthusiasm depends on the judge. In the UK, see *Saad v SS for the Home Department* [2001] EWCA Civ 2008, [15] per Lord Phillips MR. cf Human Rights Act 1998 s 3.

48 ICESCR 1966 art 13(2)(c). UDHR 1948 art 26(1)

49 e.g. M Hübner, 'Do Tuition Fees Affect Enrollment Behavior? Evidence from a "Natural Experiment" in Germany' (2012) 31(6) Economics of Education Rev 949. C Callender and J Jackson, 'Does the Fear of Debt Deter Students from Higher Education?' (2005) 34(4) J Social Policy 509.

50 European Convention on Social and Medical Assistance 1953 arts 1-4, equal right to assistances, costs covered, if person 'without sufficient resources'. Further, EU Patients' Rights Directive 2011/24/EU arts 4-8.

51 European Social Charter 1996 art 10(5)(b) state duty for 'granting financial assistance in appropriate cases'

52 e.g. Germany's Bundesausbildungsförderungsgesetz 1971, Austria's Studienbeihilfe, Denmark's Statens Uddannelsesstøtte.

53 Erasmus Regulation (EU) 2021/817 arts 3, 8, 16-17

54 Higher Education (Higher Amount) Regulations 2016 reg 6

55 R Chetty, JN Friedman, E Saez, N Turner, D Yagan, 'Income Segregation and Intergenerational Mobility Across Colleges in the United States' (2020) 135(3) Quarterly Journal of Economics 1567, 1586

56 Michael Dannenberg, Education Reform Now, *Memorandum* (June 26, 2018) 2

57 Oxford University Act 1854 ss 16 and 21, implemented today by Statute IV and VI, Council Regulations 13 of 2002, regs 4-10. Cambridge University Act 1856 ss 5 and 12, implemented today by Statute A, chs I-IV. McGaughey (2022) ch 8(1).

58 University of Toronto Act 1971 s 2, 50 person Council with 14 staff, 16 alumni and students, 16 from Lieutenant Governor.

59 The Charter of the President and Fellows of Harvard College (17 June 1976) 3, Charter of 1650, 'the said seven persons…'

60 A Borrett, 'Majority of British universities slip down global rankings' (19 June 2025) FT

61 France, Education Code, arts L712-1 to 7. Also Higher Education Law (2019) art 90.

62 Higher Education Governance (Scotland) Act 2016 ss 10 and 18

63 Programme for International Student Assessment, *PISA 2022 Results: The State of Learning and Equity in Education* (5 December 2023) vol I

64 Universal Declaration of Human Rights 1948 art 25(1)

65 International Covenant on Economic, Social and Cultural Rights 1966 art 12(2)(d)

66 NHS Act 2006 Sch 7 paras 3-9

67 e.g. Krankenhausgestaltungsgesetz Nordrhein-Westfalen §15

68 UDHR 1948 arts 22 (social security), 23(3) (fair pay), 25 (housing)

69 Statute of the European Central Bank, art 2. TFEU arts 127(1) and 282(2).

70 M Roth, 'Employment as a Goal of Monetary Policy of the European Central Bank' (2015) SSRN. TEU art 3(3)

71 M Friedman, 'The Role of Monetary Policy' (1968) 58(1) AER 1, 10.

72 e.g. SP Chan, 'Central banks must 'aggressively' raise interest rates to prevent spiralling wages, warns IMF' (2022) Telegraph

73 E McGaughey, 'Will robots automate your job away?' (2022) 51(3) ILJ 511, part 2.

74 Bank of England Act 1998 s 11

75 Federal Reserve Act of 1913, 12 USC §225a.

76 Statute of the European Central Bank, arts 10-11

77 Bank of England Act 1998 Sch 1, paras 1-2, 5-8 and 14-15

78 Federal Reserve Act of 1913, 12 USC §241